

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.MC.No. 3159 of 2007()

LP.2/2007 of ADDL.ASSISTANT SESSIONS COURT, NORTH PARAVUR
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PETITIONER/14TH ACCUSED:

SREEKUMAR, PANDIKASALAKKAL HOUSE,
KUZHIPILLY, MUNAMBAM,
ERNAKULAM

BY ADV. SMT.RASHMI.K.V.

RESPONDENTS/COMPLAINANT & STATE:

1. C.I.OF POLICE, NARACKAL POLICE STATION
2. THE STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 15/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3159 of 2007

Dated this the 15th day of October 2007

O R D E R

The petitioner is the fourteenth accused in a crime registered for offences punishable inter alia under Section 307 read with 149 I.P.C. The petitioner was not available for trial. The case against the co-accused was committed. They have already stood trial, found not guilty and acquitted as per Annexure 2 judgment. The petitioner has subsequently been apprehended. He has been enlarged on bail. The split up case against him has been committed to the Sessions court. As the petitioner was not available for trial, the same has been transferred to the list of long pending cases and the same is now pending before the learned Additional Assistant Sessions Court, North Paravur as L.P.No.2/2007.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is willing to surrender before the learned Sessions Judge and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Sessions Judge on merits, in

accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Sessions Judge to release the petitioner on bail when he appears and applies for bail.

3. The petitioner further submits that in view of the acquittal of the co-accused, the petitioner is entitled to get the case against him quashed by invoking the powers under Section 482 Cr.P.C. Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] is authority for the proposition that an absconding co-accused cannot take any benefit or advantage on the basis of the acquittal of the co-accused based purely on the materials adduced in the trial against the co-accused. The petitioner cannot, in these circumstances, claim quashing of proceedings on the ground that the co-accused who faced trial have been acquitted.

4. It is for the petitioner to appear before the learned Sessions Judge and explain to the learned Sessions Judge, the circumstances under which he could not earlier appear before the learned Sessions Judge. I find absolutely no reason to assume that the learned Sessions Judge would not consider the application for bail to be filed by the petitioner on merits, in

accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Sessions Judge and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Sessions Judge must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

6. Needless to say, the dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to raise all relevant and appropriate contentions before the learned Sessions Judge including the contention that the allegations against the petitioner have now become groundless in view of the acquittal of the co-accused.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007